

REMARKS

In the Office Action mailed January 8, 2009, the Examiner rejected¹ claims 1-60 as allegedly being obvious over U.S. Patent No. 7,016,936 to Wilkinson et al. ("*Wilkinson*") in view of U.S. Patent No. 7,370,004 to Patel et al. ("*Patel*").

By this amendment, applicant amends claims 1, 6-11, 20, 21, 26-31, 34, 35, 37, 39-41, 46, 47, 49-52, and 60; and cancels claims 2, 12, 13, 22, 32, 33, 44, and 53.²

Independent claims 1, 21, and 41

"[T]he framework for objective analysis for determining obviousness under 35 U.S.C. 103 is stated in *Graham v. John Deere Co.*, 383 U.S. 1, 148 U.S.P.Q 459 (1966). . . . The factual inquiries . . . [include determining the scope and content of the prior art and] . . . [a]scertaining the differences between the claimed invention and the prior art." M.P.E.P. § 2141(II). "The key to supporting any rejection under 35 U.S.C. 103 is the clear articulation of the reason(s) why the claimed invention would have been obvious." M.P.E.P. § 2141(III). "Office personnel must explain why the difference(s) between the prior art and the claimed invention would have been obvious to one of ordinary skill in the art." M.P.E.P. § 2141(III). In the Office Action, there must be "some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." M.P.E.P. § 2141(III).

¹ The Office Actions contain a number of statements reflecting characterizations of the related art and claims. Regardless of whether any such statement is identified herein, Applicant declines to automatically subscribe to any statement or characterization in the Office Actions.

² Claims were amended solely to expedite prosecution. Applicant preserves the right to pursue the original subject matter in subsequent applications.

Claims 1, 21, and 41

As amended, independent claims 1 and 21 both recite “assigning each of the plurality of treatments to a prioritized interaction based on a hierarchy of grouped rules, such that overriding rules have priority over interaction rules.” Amended independent claim 41 recites that “the interaction strategy module defines a plurality of treatments and assigns each of the plurality of treatments to a prioritized interaction based on a hierarchy of grouped rules, such that overriding rules have priority over interaction rules.” This concept appears throughout Applicant’s specification. *See, e.g.*, Specification at ¶¶ 55, 80, 82, and 87; *see also* Figures 6-8.

The Office Action of January 8, 2009 asserted that *Wilkinson* teaches that “assigning [each of the plurality of treatments to a prioritized interaction] is based on a hierarchy of grouped rules.” To support this assertion, the Examiner pointed to column 5, lines 61-67, reproduced below.

target. This hierarchy of motivation plans permits multiple interaction motivation plans to be considered when it is not clear which one is “best” (e.g., facilitates maximized achievement of campaign objectives within campaign restrictions). The multiple interaction plans are tested and optimized similar to testing and optimization of individual actions.

While *Wilkinson* does use the word “hierarchy” in connection with “logical rules” and “conditional instructions,” *see* column 5, lines 33-37, it does not disclose “overriding rules” or “interaction rules.” *Wilkinson* also does not disclose that “overriding rules have priority over interaction rules.”

Patel does not remedy the deficiencies of *Wilkinson* as described above. In particular, *Patel* does not describe rules processed in a hierarchy or grouping rules according to overriding rules and interaction rules.

As a result of these distinctions, the differences between the claimed invention and the prior art have not been properly ascertained, and no rational underpinning to support the legal conclusion of obviousness has been provided. Accordingly, no reason has been clearly articulated as to why the prior art would have rendered the claimed invention obvious to one of ordinary skill in the art. Thus, the rejection of claims 1, 21, and 41, as amended, should be withdrawn.

Dependent claims 3-11, 14-20, 23-31, 34-40, 42, 43, 45-52, and 54-60

Each of these claims is a dependent claim, and thus includes all the elements of its respective independent claim. All the independent claims are unobvious over the art of record, as set forth above. "If an independent claim is nonobvious under 35 U.S.C. 103, then any claim depending therefrom is nonobvious." M.P.E.P. 2143.03 (citing *In re Fine*, 837 F.2d 1071 (Fed. Cir. 1988)). Accordingly, the rejection of dependent claims 3-11, 14-20, 23-31, 34-40, 42, 43, 45-52, and 54-60 under 35 U.S.C. 103(a) should be withdrawn as well.

Applicant respectfully requests that this Amendment under 37 C.F.R. § 1.116 be entered by the Examiner, placing the claims in condition for allowance.

Furthermore, Applicant respectfully points out that the final action by the Examiner asserted new prior art against Applicant's invention. It is respectfully submitted that the entering of the Amendment would allow the Applicant to reply to the final rejections and place the application in condition for allowance.

Finally, Applicant submits that the entry of the Amendment would place the application in better form for appeal, should the Examiner dispute the patentability of the pending claims.


In view of the foregoing remarks, Applicant submits that this claimed invention, as amended, is neither anticipated nor rendered obvious in view of the prior art references cited against this application. Applicant therefore requests the entry of this Amendment, the Examiner's reconsideration and reexamination of the application, and the timely allowance of the pending claims.

Please grant any extensions of time required to enter this response and charge any additional required fees to Deposit Account 06-0916.

Respectfully submitted,

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